

Rye City Planning Commission Minutes

June 22, 2004

1 **PRESENT:**

2 Barbara Cummings, Chair
3 Martha Monserrate, Vice-Chair
4 G. Patrick McGunagle
5 Peter Larr
6 H. Gerry Seitz

7
8 **ABSENT:**

9 Nick Everett
10 Hugh Greechan

11
12 **ALSO PRESENT:**

13 Christian K. Miller, AICP, City Planner
14

15 **I. HEARINGS**

16
17 **1. Eger Residence**

18
19 Chair Cummings read the public notice. The City Planner verified that the applicant had
20 submitted an affidavit noting its compliance with the City's public notification
21 requirements.
22

23 Beth Evans (applicant's landscape architect) stated that the project involved removal of
24 an existing structure on the south side of an existing residence and the construction of a
25 new addition. The proposed addition would result in a 168 square foot increase in
26 impervious area in the wetland buffer of Blind Brook.
27

28 Ms. Evans provided an overview of the mitigation plan noting the three areas of
29 landscape plantings. Ms. Evans noted that in response to the Commission's request the
30 plan was revised to address existing stormwater runoff erosion concerns. Ms. Evans
31 noted a rain garden was proposed that would allow stormwater runoff from the
32 residence to filter through sandy soils. The rain garden areas would be treated with
33 native landscape plantings and shrubs. The mitigation plan would result in two square
34 feet of landscape plantings for every one square foot of increased impervious area. Ms.
35 Evans stated the applicant will also discontinue the dumping of leaf and lawn material
36 along the slope of the Blind Brook.
37

38 On a motion made by Peter Larr, seconded by Martha Monserrate and carried by the
39 following vote:
40

41 AYES: Barbara Cummings, Martha Monserrate, Peter Larr, Patrick McGunagle,
42 Gerry Seitz

43 NAYS: None

44 RECUSED: None

Rye City Planning Commission Minutes (Cont.)

June 22, 2004

Page 2 of 8

1 ABSENT: Nick Everett, Hugh Greechan

2
3 the Planning Commission took the following action:

4
5 ACTION: The Planning Commission closed the public hearing on wetland permit
6 application number WP156.
7

2. RJV Realty

8
9
10 Chair Cummings read the public notice. The City Planner indicated that he was unable
11 to locate the affidavit prepared by the applicant indicating compliance with the City's
12 public notification requirements. Ray Viscome indicated that he had circulated the
13 notices as required by law. The City Planner suggested that the Planning Commission
14 conduct the public hearing and if he is unable to locate the affidavit of mailing in the
15 Planning Department's files then a new public hearing would be required. Mr. Viscome
16 offered to return to his office in White Plains to get copies of the materials he submitted
17 to the City of Rye. The Commission agreed to conduct the public hearing.
18

19 Mr. Viscome provided an overview of the application noting it involves the
20 reconstruction of an existing wall along Blind Brook. Mr. Viscome stated the plans had
21 been revised to address the comments of the Planning Commission including providing
22 more detailed erosion control plans, modifications in the proposed landscaping and the
23 addition of a new dumpster enclosure. Mr. Viscome apologized that his consulting
24 engineer Mr. Grossfield could not attend the meeting.
25

26 On a motion made by Patrick McGunagle, seconded by Martha Monserrate and carried
27 by the following vote:
28

29 AYES: Barbara Cummings, Martha Monserrate, Peter Larr, Patrick McGunagle,
30 Gerry Seitz

31 NAYS: None

32 RECUSED: None

33 ABSENT: Nick Everett, Hugh Greechan
34

35 the Planning Commission took the following action:

36
37 ACTION: The Planning Commission closed the public hearing on wetland permit
38 application number WP155.
39

II. ITEMS PENDING ACTION

1. Eger Residence

40
41
42
43
44 The Commission required information on the proposed plant material and whether it
45 would spread down the adjacent slope of Blind Brook to improve slope stability. Ms.

Rye City Planning Commission Minutes (Cont.)

June 22, 2004

Page 3 of 8

1 Evans stated that the proposed plant material had a spreading root mass that would
2 provide additional slope stability. The Commission found the revised plan acceptable
3 and consistent with the comments of the CC/AC.
4

5 On a motion made by Peter Larr, seconded by Martha Monserrate and carried by the
6 following vote:
7

8 AYES: Barbara Cummings, Martha Monserrate, Peter Larr, Patrick McGunagle,
9 Gerry Seitz

10 NAYS: None

11 RECUSED: None

12 ABSENT: Nick Everett, Hugh Greechan
13

14 the Planning Commission took the following action:
15

16 ACTION: The Planning Commission adopted a resolution conditionally approving
17 wetland permit application number WP156.
18

2. Coveleigh Club

19
20
21 The Planning Commission reviewed the revised site plan with the City Planner. The
22 Commission noted that the extent of grading had been reduced to minimize the impact
23 on an existing tree and that a ramp had been provided from the ground to the proposed
24 decking for the cabanas. The City Planner noted that two replacement trees had been
25 provided as requested by the Planning Commission for the one tree proposed to be
26 removed. The City Planner reviewed the draft resolution of approval noting that the
27 applicant would be prohibited from importing any fill into the designated flood zone on
28 the property.
29

30 On a motion made by Peter Larr, seconded by Patrick McGunagle and carried by the
31 following vote:
32

33 AYES: Barbara Cummings, Martha Monserrate, Peter Larr, Patrick McGunagle,
34 Gerry Seitz

35 NAYS: None

36 RECUSED: None

37 ABSENT: Nick Everett, Hugh Greechan
38

39 the Planning Commission took the following action:
40

41 ACTION: The Planning Commission adopted a resolution conditionally approving
42 final site plan application number SP280.
43

3. Kacha Residence

44
45

Rye City Planning Commission Minutes (Cont.)

June 22, 2004

Page 4 of 8

1 Aleksandra Moch (applicant's consultant) stated the applicant was seeking to construct
2 a 125-square foot addition within the 100-foot wetland buffer. The proposed addition
3 would connect the existing residence with the existing garage. Also included in the
4 impervious surface calculation was a walkway to connect the addition to the driveway.
5 Ms. Moch stated that there would be removal of some existing impervious area.

6
7 The Planning Commission requested that the applicant provide wetland mitigation
8 plantings consistent with its practice. Ms. Moch stated that there is little opportunity to
9 provide meaningful mitigation on the site given the existing limited lawn and play
10 equipment within the wetland buffer. The Commission stated that mitigation plantings
11 should be provided prior to any public hearing. Ms. Moch agreed to provide such plant
12 material in advance of the Commission's July 20th meeting.

13
14 The Planning Commission reviewed the wetland delineation. The City Planner stated
15 that the wetland boundary was based on a recent subdivision approval known as the
16 "Ruegger Subdivision." The Commission requested the City Planner provide additional
17 information regarding this prior approval.

18
19 On a motion made by Patrick McGunagle, seconded by Gerry Seitz and carried by the
20 following vote:

21
22 AYES: Barbara Cummings, Martha Monserrate, Peter Larr, Patrick McGunagle,
23 Gerry Seitz

24 NAYS: None

25 RECUSED: None

26 ABSENT: Nick Everett, Hugh Greechan

27
28 the Planning Commission took the following action:

29
30 ACTION: The Planning Commission set a public hearing on wetland permit
31 application number WP157 for its next meeting on July 20, 2004.

32 33 4. Beechwind

34
35 Albert Pirro (applicant) introduced Neil DeLuca (partner) and his environmental
36 consultant. Mr. Pirro stated that in preparing his most recent submission he reviewed
37 prior minutes of the Planning Commission to address their concerns with the previously
38 proposed four-lot subdivision. Mr. Pirro noted that he is seeking a two-lot subdivision,
39 which is considered a minor subdivision under the City of Rye subdivision regulations.
40 Mr. Pirro added that he no longer has any rights to the Shongut property and that it is
41 his understanding that the property may be under contract with another potential buyer.

42
43 Mr. Pirro stated that the two-lot subdivision includes a view corridor along the southern
44 property. Mr. Pirro stated that the 35-foot corridor is provided to resolve pending
45 litigation against Beechwind properties and the Rye City Board of Appeals. Mr. Pirro

Rye City Planning Commission Minutes (Cont.)

June 22, 2004

Page 5 of 8

1 stated that the settlement with the opposing neighbor, Mr. Kreeger, has been executed
2 and the lawsuit has been withdrawn.

3
4 Mr. Pirro stated that the most recent submission addresses previous Planning
5 Commission comments regarding the presence of asbestos on the property, stormwater
6 quality measures, the preparation of a Phase II study and approval of the proposed
7 remediation plan by the New York State Department of Environmental Conservation
8 (NYSDEC).

9
10 Chair Cummings provided an overview of the history of the application noting that the
11 Board of Appeals is reviewing the proposed two-lot subdivision as an amended
12 application and that it had vacated all prior decisions with respect to its previous
13 approval for the four-lot subdivision. The approvals that were vacated included the
14 proposed use variances, area variances and LWRP Coastal Consistency determination.
15 The Board of Appeals reaffirmed its prior negative declaration with respect to the two-lot
16 subdivision.

17
18 The Planning Commission noted the application involved subdivision and wetland
19 permit approval. It was the opinion of the Commission that an advisory LWRP Coastal
20 Consistency determination was also required to be provided by the Planning
21 Commission to the Board of Appeals consistent with Chapter 73 of the Rye City Code.
22 The Commission indicated that it would be conducting an LWRP review to determine
23 the project's consistency with the City's LWRP policies. The Commission requested that
24 Mr. Pirro provide a coastal consistency form and provide a written response to indicate
25 how the proposed project complies with each of the 44 policies of the City's LWRP.

26
27 Mr. Pirro responded that he would comply with the Commission's request but that it was
28 not his understanding that the Board of Appeals was looking to conduct a new LWRP
29 review.

30
31 The Planning Commission noted that the prior application included a variety of
32 components and amenities that were supportive of development in a coastal zone
33 including the offering of boat slips to the City, the creation of a boating club, waterfront
34 access and other amenities. Mr. Pirro responded that the Board of Appeals indicated
35 that they did not want many of those features and did not require them in its approval of
36 the four-lot subdivision.

37
38 The Commission reviewed the subdivision aspects of the project. The Commission
39 noted concern with a 5-foot side yard setback proposed along the northern property line
40 of lot two. The setback provides inadequate separation from the proposed residence to
41 an existing business operation. The Commission suggested that this setback be
42 increased to address future land use compatibility concerns as well as a possible future
43 residential subdivision on the adjacent property. The Commission stated that if a future
44 residential subdivision were to occur on the adjacent Shongut property that a compable

Rye City Planning Commission Minutes (Cont.)

June 22, 2004

Page 6 of 8

1 5-foot setback on that property would provide a separation of only ten feet between two
2 residences. The Commission deemed this separation inadequate.

3
4 The Commission also noted concerns that relocating the proposed residence on Lot 2
5 further south may result in an inadequate separation of the residence proposed on
6 Lot 1.

7
8 Mr. Pirro responded that increasing setbacks of residences from property lines would
9 result in the encroachment of structures within the 35-foot view corridor. Mr. Pirro stated
10 that this corridor cannot be compromised since it would be in violation of the settlement
11 with Mr. Kreeger.

12
13 The Planning Commission reviewed the environmental issues associated with the
14 property based on the environmental reports prepared by the applicant. The
15 Commission noted that the Phase II analysis showed presence of arsenic, cadmium, and
16 chromium on the site and that the remediation would involve the removal of some
17 material and the addition of a soil cap. The Commission stated that the applicant should
18 consider a remediation program involving a complete removal and excavation of these
19 materials and a replacement with clean fill rather than a soil cap. The Commission
20 noted concern with the presence of these materials if they were to remain on site given
21 the proximity to a flood prone area with brackish water. The Commission noted that the
22 salt content within the water would likely make these materials more mobile and
23 potentially cause off-site environmental concerns. The Commission stated that complete
24 excavation should focus on the rear portion of the property located closest to Milton
25 Harbor.

26
27 The Planning Commission questioned the 35-foot view corridor restriction on the
28 property. Mr. Pirro responded that the restriction runs with the land for the current and
29 future owners. The proposed restriction is enforceable by the City of Rye and that the
30 City is a third party beneficiary. Mr. Pirro stated that drafts of the restriction were
31 submitted to the Board of Appeals for their review, which found the restriction
32 appropriate. Mr. Pirro added that the restriction was agreed to by the neighbor opposite
33 the project site, Mr. Kreeger, and has been executed on the property. The existing
34 lawsuit against Beechwind Properties and the Board of Appeals has been dismissed.

35
36 The Planning Commission discussed wetlands permitting issues for the proposed
37 project and requested that the applicant revise its submission to provide a correct
38 reference to the current two-lot subdivision proposal. The Commission noted
39 inconsistencies throughout the applicant's submission referencing previously proposed
40 four-lot subdivision.

41
42 The Commission questioned the condition of the existing bulkhead and whether it would
43 be removed or modified. Mr. Pirro stated that there would be no modifications to the
44 existing bulkhead and that new docks may be installed with new power and water

Rye City Planning Commission Minutes (Cont.)

June 22, 2004

Page 7 of 8

1 hookups. Mr. Pirro noted the previous proposal replaced the deteriorating bulkhead wall
2 only on the adjacent Shongut property.

3
4 The City Planner added that the applicant should provide more detail regarding the
5 extent of impervious surfaces within the 100-foot wetland buffer for both existing and
6 proposed conditions. More detailed engineering plans would also be required to
7 demonstrate that adequate stormwater quality measures are provided.

8
9 Neil DeLuca (applicant's partner) expressed concern with the Planning Commission's
10 comments noting the extent of restriction on the property associated with the 35-foot
11 view corridor. Mr. DeLuca stated that it would be impossible for the applicant to revise
12 its plans to provide a greater setback from adjacent property lines without encroaching
13 into the 35-foot view corridor, which was provided as a settlement to a lawsuit. Mr.
14 DeLuca stated that it appeared the Commission was suggesting that the size of the
15 houses be reduced. He stated that this modification would not be economically possible.
16 Mr. DeLuca added that there appear to be differences of opinion between the Zoning
17 Board and the Planning Commission and that the applicant was caught in between
18 these opposing points of view. Mr. DeLuca had stated that the applicant was willing to
19 make modifications but the Planning Commission would need to respect these
20 restrictions and be more specific in its recommendations.

21
22 The Commission responded that it appreciated the economic, development and other
23 site restrictions on the property but that it had an obligation to consider the community
24 planning issues associated with the development of the site and its impact on adjacent
25 properties and the surrounding neighborhood. The Commission noted that many of the
26 applicant's restrictions were self created, particularly the placement of a covenant on
27 the property to address a litigation concern, but that these restrictions can not
28 supercede the Commission's coastal consistency considerations and other policy
29 planning issues.

30
31 Mr. Pirro responded that under existing zoning the applicant could construct a
32 restaurant with parking in front of the building and provide limited property setbacks
33 under the current B-7 waterfront business district restrictions. He stated that this plan
34 would be less desirable to neighbors than the current proposal. Mr. Pirro added that the
35 issue regarding self created hardship is something that the Board of Appeals is required
36 to address rather than the Planning Commission. Mr. Pirro requested if there were any
37 specific plan modifications that the Commission is seeking.

38
39 The Commission responded that they'd like the applicant to prepare an aggressive
40 remediation plan that removed more of the on-site contaminants particularly those
41 located along the water's edge. The Commission requested that the applicant provide
42 more information demonstrating the project's consistency with the LWRP policies. The
43 Commission noted in particular that the applicant's proposed view way appears to
44 consist of existing vegetation and trees, which may not provide any visual access to the
45 water and therefore would not be consistent with the City's LWRP. The Planning

Rye City Planning Commission Minutes (Cont.)

June 22, 2004

Page 8 of 8

Commission stated that the setbacks of the proposed residences from side property lines should be increased, at minimum to be consistent with the setbacks for residential structures in other Rye City Zoning Districts with comparable development patterns. The City Planner cautioned, however, that those setback measures were established assuming a residence abutting a residence rather than a residence abutting a commercial operation. The Planning Commission also requested that the applicant provide more information regarding proposed wetland plants and calculation of existing and proposed impervious areas.

The Commission agreed that it would continue this discussion at its next meeting on July 20, 2004.

5. RJV Realty

Mr. Ray Viscome indicated that he returned from his office in White Plains and presented the City Planner with a copy of the affidavit he submitted to City Hall indicating compliance with the City's notification requirements. The City Planner found the affidavit acceptable. Also in attendance was a Rye resident who had received a copy of the notice who missed the public hearing. He indicated that he was a 25 year resident and noted concern with the potential impact of the project on flooding.

The Planning Commission reviewed the revised plan and requested that the setback of the proposed dumpster enclosure be relocated so that it is no closer than five feet to the side property line. The Commission noted that this expanded area will provide a greater opportunity for plantings to grow.

The Commission requested that the site plan be revised to clarify that five parking spaces will be provided on the property.

The City Planner noted that the applicant will be required to demonstrate that the proposed basement access meets the requirements of the City's Floodplain Management Law to the satisfaction of the City Building Inspector. To demonstrate compliance the applicant will be required to demonstrate that the elevation of the top step to the basement access is above the 100-year flood elevation.

The City Planner also explained that he was advised by the Westchester County Department of Public Works that a stream control permit would be required for the project. The City Planner noted that this permit requires consent from the City of Rye and that the applicant would be required to provide those forms to the City for submission to Westchester County before a building permit would be issued.

6. Minutes

The Planning Commission reviewed and approved the minutes of its June 8, 2004 meeting.